of the United States, they are, under that sub-clause, constitutional and operative. Under that sub-clause the State is made the primary judge whether the imposts and duties, so laid, are necessary for the execution of its inspection laws. It is prevented from using this power for any other purpose by the declaration, in the sub-clause referred to, that the *net* produce of all duties, or imposts, laid by it, shall be for the use of the treasury of the United States; and by the further sufficient provision that all laws, laying such imposts, shall be subject to the revision and control of Congress. It would seem, under the particular sub-clause, that a State law, which is, in fact, an inspection law, and which imposes a duty on imports, or exports, for the purpose of executing the inspection laws of such State, is subject only to two restrictions, viz.: the right of the United States to receive the net produce of such duties, or imposts, and to the power of Congress to revise and control the law imposing such duties, or imposts: Baldwin's Const. Views 189.

Such duties are of course regulations of commerce, but they are regulations incidentally made by a State in relation to a product of its own soil, by means of inspection laws, which such State has authority to execute within its own territory, under the express and implied terms of art. 1, sect. 10, sub-clause 2, of the Federal Constitution. It is scarcely necessary to call the charges which accrue in the execution of the inspection laws of a State *duties*. They are, ordinarily, simply a compensation for services properly rendered: *Pace* v. *Burgess*, *Collector*, 92 U. S. 375, 376; *Packet Co.* v. *Keokuk*, 95 Id. 84, 86–89; *Packet Co.* v. *St. Louis*, 100 Id. 429, 430; *Vicksburg* v. *Tobin*, Id. 432, 433.

It may be true, that the imposition of such charges has a remote and considerable influence on commerce. The charges are not objectionable on that account: *State Tax on Railway Gross Receipts*, 15 Wall. 293; *Sherlock* v. *Alling*, 93 U. S. 103, 104. They are proper charges, because they are made for the purpose of fitting an article for exportation, while it remains in the bosom of the State which produced it: *Gibbons* v. *Ogden*, 9 Wheat. 203; *License Cases*, 5 How. 577; *Hall* v. *De Cuir*, 95 U. S. 488; *Foster* v. *New Orleans*, 94 Id. 248.

C. J. M. GWINN.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF GEORGIA.[2]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[3]

SUPREME COURT OF OHIO.[4]

SUPREME COURT OF TENNESSEE.[5]

ACTION.

Agent—Right to sue in own Name—Landlord and Tenant.—A party entering into a contract in his own name may sue or be sued upon it,

[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1882. The cases will probably appear in 16 Otto.

[2] From J. H. Lumpkin, Esq., Reporter; to appear in 65 or 66 Georgia Rep.

[3] From John Lathrop, Esq., Reporter; to appear in 133 Mass. Reports.

[4] From E. L. Dewitt, Esq., Reporter; to appear in 38 or 39 Ohio St. Reports.

[5] From Hon. Benjamin J. Lea, Reporter; to appear in 10 Lea.

whether he be in fact agent or principal: *Davis* v. *Harness*, 38 or 39 Ohio St.

Where a landlord, with the consent of his tenants, sold their share of a crop of corn with his own, and afterward brought an action against the purchaser for not accepting the corn, the fact that the landlord did not own all the corn, neither constitutes a defence nor operates to diminish the damages. If the acceptance of the corn by the purchaser would have invested him with a good title, it is not material whether the landlord owned all the corn or not: *Id.*

When not Local—Bill to enjoin Trespass.—A bill in equity to enjoin a trespass upon realty by felling timber is not such a suit respecting the title to land as must be brought in the county where the land lies. The proper venue of such a case is the county of the residence of a defendant against whom substantial relief is prayed: *Powell* v. *Cheshire*, 65 or 66 Ga.

AGENT. See *Action; Bills and Notes.*

ARBITRATION.

Award—Avoidance—Drunkenness.—An award based upon statements made by each party will not be set aside upon bill filed by one party alleging that he was drunk at the time the reference and statement were made, where the proof shows that he, though in liquor, was capable of acting intelligently: *O'Neil* v. *Rodgers*, 10 Lea.

ASSIGNMENT.

For benefit of Creditors signing within limited Time—Failure to sign through Accident.—Two debtors made an assignment of all their property in trust, for the security of new notes to be given by them to such of their creditors as should become parties to the assignment within two months from the date thereof. By the terms of the assignment each creditor was to receive four new notes, payable at different times, the last being payable in thirty months, and covenanted not to sue on his original demand except on default in the payment of the new notes. The trustees paid only a dividend on the new notes. After the last of the new notes matured and one debtor had received a discharge in bankruptcy and the other had ceased to be a resident of the commonwealth, a creditor brought a bill in equity seeking to become a party to the assignment. *Held*, that, although the trustees had funds sufficient to pay him the same dividend which the creditors who signed had received, and although he had accidentally failed to be a party to the assignment, and would have been one had he known of it in time, the bill could not be maintained: *First Nat. Bank* v. *Smith*, 133 Mass.

BILL OF SALE.

Signature by Mark—Absence of Witnesses.—Where one signs his name to a bill of sale by making his mark, such bill of sale is not rendered inadmissible, because there was no witness to the signature. If proved genuine, such signature is good and binding: *Larkin* v. *City of Darien*, 65 or 66 Ga.

BILLS AND NOTES.

Presentment and Protest of Foreign Bill of Exchange—Notary's Seal

—The presentment of a foreign bill of exchange is to be made within the time allowed by the law of the place where the bill is payable, and the protest thereof must be in accordance with that law. It appeared in this case that the law of Norway allows a year for the presentment of a bill at sight: *Pierce* v. *Indseth*, S. C. U. S., Oct. Term 1882.

The court will take judicial notice of the seals of notaries public. An impression directly on the paper by a die with which ink is used, is sufficient: *Id.*

Signature as Agent.—The character of the liability of drawer of a bill of exchange must be determined from the instrument itself; and the addition of the word "agent" to his name, without anything else on the instrument indicating his principal, does not relieve him from personal liability as drawer of the bill: *Ohio Nat. Bank* v. *Cook*, 38 or 39 Ohio St.

Consideration—Voluntary Release of Debt.—In an action on a promissory note, it was alleged that the sole consideration of the note was a debt to the payee, which he had voluntarily discharged: *Held*, it appearing from the agreed statement of facts that the creditor had given the debtor a "release" of the debt, the presumption arises that the release was in such form as to operate as an extinguishment of the obligation, in the absence of any showing as to the form of such release: *Carver* v. *Second Nat. Bank*, 38 or 39 Ohio St.

A debt voluntarily released by the creditor is not sufficient consideration to support a promise of the debtor to pay him the amount of such debt: *Id.*

Common Carrier.

Responsibility beyond its own Terminus—Contract of Carriage a question of General Law.—A common carrier receiving goods for transportation beyond its own line, in the absence of special contract, only imposes on itself as to the transportation beyond its terminus, the duty of a forwarder by the connecting line: *Railroad Company* v. *Myrick*, S. C. U. S., Oct. Term 1882.

In this case the company's receipt stated the property to be "*consigned*" to parties beyond the terminus of the carrier issuing it; and, after describing the property it added "for transportation * * * to the warehouse at ———," leaving the place blank: on the margin was "*Notice.—See rules of transportation on the back hereof." The rules referred to stated that the company would only act as forwarder beyond its own line. On the margin of the receipt was a notice that it might be "exchanged for a through bill of lading:" *Held*, that the receipt did not constitute a through contract: *Id*

What constitutes a contract of carriage is not a question of *local* law, upon which the decision of a state court must control, but one of *general* law, upon which the U. S. Supreme Court will exercise its own judgment: *Id.*

Conflict of Laws. See *Common Carrier.*

Constitutional Law. See *Pilotage.*

Contract.

Contract of Support—Breach of—Pleading.—If the breach of a contract by one person to support another for his life is such that the latter

may treat the contract as absolutely broken, and he so elects to treat it, he may recover damages for the whole value of the contract: *Parker* v. *Russell*, 133 Mass.

A declaration alleging that, in consideration of the conveyance by the plaintiff to the defendant of certain real estate, the defendant agreed to support the plaintiff during his life, and that the defendant accepted the conveyance and occupied the estate, but refused and neglected to perform his agreement, is sufficient to enable the plaintiff to recover damages as for a total breach of the agreement: *Id.*

COPYRIGHT. See *Injunction.*

CORPORATION.

Right of Stockholder to sue to protect Property of Corporation — A single stockholder can only sue to protect the property and rights of a corporation after a refusal and neglect of the directors so to do, real and persisted in, and which would lead to irremediable loss to him if he were not permitted to bring the matter before the courts: *City of Detroit* v. *Dean*, S. C. U. S., Oct. Term 1882.

Volunteer Fire Company—Death of Member—Distribution of Assets.— A volunteer fire company was chartered by act of the legislature. Its officers were to be commissioned by the governor. It had no stock nor subscription by its members, and its property was such as was acquired by donation. The only compensation of the members was relief from jury and militia duty. A member died, and some fifteen years thereafter, there having been no administration, there was a fund arising from the sale of property of the company in which his heirs claimed an interest, and to assert which they filed their bill. *Held*, that they had no right to participate in the fund, either during the existence of the corporation, or after its dissolution: *Mason* v. *Atlanta Fire Co.*, 65 or 66 Ga.

Corporation de facto—Estoppel—Incorporation of Trading Company —Liability for Existing Debts.—Where parties commenced and carried on business as a corporation *de facto*, and held themselves out to the world as such, and in that name and character obtained credit, they were estopped from denying such character and name, especially after judgment had been rendered against them: *Georgia Ice Co.* v. *Porter*, 65 or 66 Ga.

The conversion of a trading company, acting as a corporation *de facto*, into one *de jure*, will not exempt the property held in the latter character from liability to the obligations of the former: *Id.*

COVENANT.

Against Encumbrances—Breach of—Building Restrictions.—A conveyance of a lot of land was subject to the "conditions," that "no dwelling-house or other building, except necessary out-buildings, shall be erected or placed on the rear of the said lot," and that "no buildings which may be erected on the said lot shall be less than three stories in height, exclusive of the basement and attic, nor have exterior walls of any other material than brick, stone or iron, nor be used or occupied for any other purpose or in any other way than as a dwelling-house for the term of twenty years" from a certain day. *Held*, that these were

to be construed as restrictions, and not as conditions, and constituted a breach of a covenant against encumbrances in a subsequent deed: *Ayling* v. *Kramer*, 133 Mass.

Criminal Law.

Punishment—Fine and Imprisonment.—When the accused is properly convicted, it is the duty of the court to "pronounce the judgment provided by law," and a judgment imposing a greater or less fine or imprisonment than the statute prescribes, may be reversed; but where a statute provides for both fine and imprisonment, and one of the penalties is omitted, the error will not afford ground of reversal, if the punishment imposed is authorized by the act: *Dillon* v. *State*, 38 or 39 Ohio St.

Keeping open Tippling House on Sunday.—It makes no difference in law whether a place be called a bar-room, a glee club, a parlor, or a restaurant; if it be a place where liquor is retailed and tippled on the Sabbath day, with a door for entrance, so that anybody can push it open enter and drink, the proprietor is guilty of keeping open a tippling house on Sunday. Nor does it matter whether the drinking be done standing or sitting, whether at the bar or around a table. In either event it is tippling, and the place where it is done is a tippling house: *Hussey* v. *State*, 65 or 66 Ga.

Damages.

Measure of, for Timber cut and carried away.—In an action for timber cut and carried away from the land of the plaintiff, the measure of damages is: 1. Where the defendant is a wilful trespasser, the full value of the property at the time and place of demand or, of suit brought, with no deduction for labor and expense of the defendant; 2. Where the defendant is an unintentional or mistaken trespasser, or his innocent vendee, the value at the time of conversion, less what the labor and expense of defendant and his vendor have added to its value; 3 Where defendant is a purchaser without notice of wrong from a wilful trespasser, the value at the time of such purchase: *Wooden Ware Company* v. *The United States*, S. C. U. S., Oct. Term 1882.

For Ejectment from Car—Arrest for evading Fare—Illness from Improper Treatment by Police Officers.—At the trial of an action of contract for a breach of the agreement of a railroad corporation to carry the plaintiff as a passenger on its railroad from S. to N., it appeared that he bought a ticket at S. which entitled him to be carried to N.; that the defendant's conductor refused to receive the ticket, and, when the train arrived at an intermediate station, the conductor, who was a railroad police officer, arrested the plaintiff for evading his fare, and delivered him into the custody of two police officers, who detained him during the night in the place provided for arrested persons. *Held*, that the detention of the plaintiff during the night, his discomforts in the place of detention, illness produced by the dampness of the cell in which he was confined, and the indignities which he suffered at the hands of the police officers, were not elements of damage, which he could recover in this action: *Murdock* v. *Boston and Albany Railroad*, 133 Mass.

Debtor and Creditor.

Conveyance—Consideration.—A conveyance by an insolvent father-in-law made to his daughter-in-law, in consideration of amounts received and owing by him as her guardian, is valid; and his creditors can not force him to set off amounts furnished by him for the maintenance and support of her and her husband: *Comfort* v. *Bearden*, 10 Lea.

Decedents' Estates.

Trust—Fraudulent Receipt of Moneys by Legatee—Deduction from subsequent Income.—If a person, who is a legatee and also *cestui que trust* under a will, fraudulently receives from the executor of, and trustee under, the will, property which forms part of the principal of the trust fund, and converts it to his own use, a person subsequently appointed trustee may retain, out of the income afterwards coming to the *cestui que trust*, the amount so converted: *Crocker* v. *Dillon*, 133 Mass.

Equity. See *Partition.*

Evidence.

Witness—One of two Joint Defendants—Evidence as to Interest.—If, in an action of tort against two defendants, one of the defendants calls the other as a witness, he cannot, before the credibility of the witness has been attacked by the plaintiff, put in evidence for the purpose of sustaining the testimony of the witness, that the witness was without any means to satisfy any judgment that might be obtained against him: *Bryant* v. *Zidgewell*, 133 Mass

Execution.

Levy on Real Estate.—No entry by the sheriff upon real estate is necessary to constitute a valid levy thereon: *Morgan* v. *Kinney*, 38 or 39 Ohio St.

Exemption. See *United States.*

False Imprisonment.

Duty of Person making Arrest to convey Prisoner before a Magistrate.—It is the duty of a person making or causing an arrest to be made, to convey the party arrested without delay before the most convenient officer authorized to receive an affidavit and issue a warrant. This duty is not discharged by delivering the person arrested into the custody of a police officer, who has no authority to take an affidavit and issue a warrant. The imprisonment under such an arrest would not be legal beyond a reasonable time allowed for procuring a warrant; and what constitutes a reasonable time is a question for the jury: *Ocean Steamship Co.* v. *Williams*, 65 or 66 Ga.

The object of the arrest is to carry the prisoner before a magistrate. After a warrant has been issued, and the accused has been placed under arrest, a reasonable time will be allowed by the presiding magistrate for making an investigation and procuring the evidence in the case: *Id.*

Guardian and Ward.

Delay in asking for Account.—Mere delay of a ward on his arriving of age to compel his guardian to settle his accounts in the probate

court, does not discharge the sureties, notwithstanding the guardian may, in the meantime, have become insolvent: *Newton* v. *Hammond*, 38 or 39 Ohio St.

Husband and Wife.

Conveyance to Married Woman—Agreement to assume Mortgage.—The plaintiff held the notes of B., secured by a mortgage on his land. B. conveyed the land to a married woman, by deed of general warranty, in consideration of a sum of money paid, and of her accepting a deed in which "said grantee assumes * * * as part of the purchase-money," said mortgage debt. This was the only separate property she possessed. She conveyed the land to F., and he conveyed to defendants by like deeds, each containing a stipulation in favor of their grantors that the grantees assumed and agreed to pay the mortgage debt as part of the purchase-money. Upon foreclosure and sale, the proceeds were insufficient to pay the mortgage debt. *Held*, That, aside from the disability of coverture, the acceptance by the married woman of the deed from B., containing the clause, that said grantee assumed as part of the purchase-money, the mortgage debt, was an agreement between herself and her grantor to pay the mortgage debt as part payment of the consideration agreed by her to be given for the land. The transaction was not a purchase of the equity of redemption, subject to the mortgage, but of the land in fee, with a stipulation as to the manner in which the purchase-money agreed upon by the parties should be paid: *State* v. *Casey*, 38 or 39 Ohio St.

A married woman owning real estate, as her separate property, has legal capacity, her husband joining, to convey the same to her vendee, and she may stipulate for such terms of payment of the purchase-money as she may think best: *Id.*

After her conveyance is executed and delivered, her grantee is legally bound to pay the consideration-money in the manner stipulated, the same as if she were a feme sole: *Id.*

The defendants, as grantees of F., having agreed with him to pay this debt as part payment of the purchase-money, were liable to the mortgagee on such promise, in an action to recover the deficiency: *Id.*

In such an action by the mortgagee it is a good defence to show that before the plaintiff has assented to or acted on the promise made in his favor, the agreement has been rescinded: *Id.*

Divorce — Custody of Children.—The jurisdiction exercised in a divorce suit with respect to the custody of children is continuing; the order in that respect may be modified at any time during the minority of the children, when their interests may require such modification; and the reservation of such power in the original order is not essential: *Neil* v. *Neil*, 38 or 39 Ohio St.

Purchase in Wife's Name—Resulting Trust.—When the husband purchases land and takes title in the name of the wife, the presumption in the absence of contrary proof, is that the husband intended the land as a provision for the wife; but this presumption is one of intention merely, and can be rebutted by any evidence that the husband purposed to retain for himself the beneficial ownership. Where the husband, an illiterate negro, engaged in service at a distance from his wife, sent his

wages to her with instructions to invest them in a lot, which she purchased and thus paid for, taking title in her own name, it was held accordingly, upon bill filed by the husband three years after his wife's death, that he might set up a resulting trust in the lot: *Johnson* v. *Turner*, 10 Lea.

Injunction.

Representation of Dramatic Work—Copy obtained by Spectator.—The representation of a dramatic work, which the proprietor has never caused to be printed and has not obtained a copyright of, if made without license of the proprietor, is a violation of his right, and may be restrained by injunction, although such representation is from a copy obtained by a spectator attending a public representation by the proprietor for money, and afterwards writing it from memory: *Tompkins* v. *Halleck*, 133 Mass.

Insurance.

Statements in Application—Insertion of by Agent without knowledge of Insured—Forfeiture.—If an application for a policy of insurance on the life of a person provides that the representations and answers made therein "shall form the basis and become part of the contract of insurance," and "that any untrue answers will render the policy null and void," and the policy recites that it is issued "in consideration of the representations and agreements in the application for this policy, which application is referred to and made a part of this contract," in an action upon the policy the application is to be considered a part of the contract, and if the representations in it are in a material respect untrue, the action cannot be maintained, although the untrue representations were inserted in the application by the agent employed by the defendant to solicit insurance, without the knowledge of the applicant, who orally stated the truth to the agent: *McCoy* v. *Metropolitan Life Ins. Co.*, 133 Mass.

Mortgagor—Interest not Divested by Irregular Sale.—Where an order confirming a sale, made under a decree of foreclosure to a mortgagee who is a party, is at the same term vacated and the sale set aside for want of notice as required by statute, the insurable interest of the mortgagor in possession is the same in the property as if such sale and confirmation had not been made: *Richland County Ins. Company* v. *Sampson*, 38 or 39 Ohio St.

Where a loss to property covered by insurance in favor of the mortgagor, occurs after such confirmation and before the order was vacated and the sale was set aside, the insurable interest, which the mortgagor in possession had, was not divested by such unauthorized sale and confirmation: *Id.*

Intoxicating Liquor. See *Criminal Law.*

Mandamus.

City Clerk—Neglect to Advertise under Ordinance.—Mandamus will not lie upon the relation of a citizen and owner of land abutting upon a street through which a line of railroad authorized by ordinance would pass if constructed, to compel the city clerk to make the advertisement

required of him by the ordinance when he wrongfully refuses or neglects so to do: *State* v. *Henderson*, 38 or 39 Ohio St.

MORTGAGE. See *Husband and Wife.*

NEGOTIABLE INSTRUMENT.

Overdue Coupons of Bonds not Matured.—Overdue coupons of municipal bonds which have not matured are negotiable by the law merchant: *Town of Thompson* v. *Perrine*, S. C. U. S., Oct. Term 1882.

PARTITION.

Difference between Partition at Common Law and in Equity—When Decree for Partition will not be enforced by Decree for Conveyance.—The difference between a judgment and writ of partition at common law, and a partition by decree in chancery, as it affects the title, is, that the former operates by way of delivery of possession and estoppel, while in the latter, unless otherwise provided by statute, the *transfer of the title* can be effected only by the execution of conveyances between the parties, which may be decreed by the court and compelled by attachment: *Gay* v. *Parpart*, S. C. U. S., Oct. Term 1882.

Where a decree for partition erroneously declared the nature of the estate of each co-tenant, and deeds were made three days after which did not follow this decree, a bill being brought twelve years afterwards to perfect the partition by compelling conveyances in accordance with the original decree, *Held.* that the court could inquire into the equities of the parties arising out of the surrounding circumstances and refuse to decree conveyances when inequitable to do so: *Id.*

If such original decree was made by consent of the party against whom the error was committed, and without any valuable consideration, and no one is interested but volunteers, or those who have purchased with full notice of the facts, no such decree for conveyance will be made: *Id.*

PARTNERSHIP.

Liability of Firm Assets.—The right of partnership creditors to firm assets is wholly worked out through the equities of the partners; therefore, where a surviving partner, with the acquiescence of the personal representatives of his deceased partner, and in good faith, carries on the business and pays debts incurred by him in so doing with the partnership assets in his hands, such disposition of the assets will be valid and effectual and cannot be treated as a fraud in law upon partnership creditors: but upon a bill filed by the personal representatives of the deceased partner or a partnership creditor, he can be compelled to wind up the firm business and apply its assets to the payment of its debts: *Fitzpatrick* v. *Flanagan*, S. C. U. S. Oct. Term 1882.

PILOTAGE.

State Law—Requirement that first Pilot offering shall be accepted —Prior Contract with another Pilot—Sect. 4237, *Rev. Stat.*—Section 1512 of the Georgia code, providing that any master or commander of a ship or vessel bearing towards any of the ports or harbors of this state (except coasters in this state, plying between the ports of this state and those of South Carolina and Florida) is bound to receive on board the

first pilot who shall offer his services outside the bar, exhibiting his license if demanded, and that on refusing so to do, he becomes liable on arriving in such port to pay the pilot so offering the full rate of pilotage established by law for such vessel, does not violate art. 4, sect. 2, of the U. S. Constitution: *Thompson* v. *Spraigue*, 65 or 66 Ga.

The exception in favor of coasters between the ports of Georgia and those of South Carolina and Florida is contrary to section 4237 U. S. Rev. Stat., and annulled by it, except as to those ports situated upon waters which are the boundary between Georgia and those states. As to these, the master of a vessel may employ any pilot licensed or authorized by the laws of either state: *Id.*

That such exception of the Code in favor of certain vessels is repugnant to the statute of the United States annuls such exception, but does not invalidate the remainder of the section, the objectionable part being separable from the balance: *Id.*

A prior contract between the master or commander of a vessel and another pilot to receive him on board at a point nearer the bar, will not give the right to reject the pilot first offering without becoming responsible for his fees under section 1512: *Id.*

RAILROAD.

Power to Purchase Road.—When a railroad company has the right of constructing a particular line of railroad, with general power to purchase all kinds of property, it may purchase from another company a road constructed upon that line, if the latter company had power to sell and dispose of the same: *Branch* v. *Jesup*, S. C. U. S., Oct. Term 1882.

SALE. See *Vendor and Vendee.*

STATUTE.

Penal Ordinance—General Words—Construction.—Where an act is made punishable by fine and imprisonment, the words in which the offence is defined and punishment prescribed must be strictly construed, whether they are found in a statute, or an ordinance, or by-law: *Shultz* v. *Incorporated Village of Cambridge*, 38 or 39 Ohio St.

General words, following particular and specific words, must, as a general rule, be confined to things of the same kind as those specified: *Id.*

In an ordinance prohibiting saloon-keepers from permitting at, in or about the doors, windows, openings, or in the interior of their saloons, "any blind, screen, painted or frosted glass, shade, curtain or other device," the words "other device" do not embrace a board partition beteen different rooms of a building, such partition extending from floor to ceiling, fastened in the usual manner, and intended by the owner, when he placed it in the building, as a permanent accession to the realty: *Id.*

TRIAL.

Special Verdict—Necessity of the Submission of all Material Issues to the Jury.—The court propounded to the jury certain questions, covering only a part of the material issues of fact. These and the answers were returned as a special verdict. There was no general verdict, nor was there a bill of exceptions showing the evidence adduced. The judgment recited that it was rendered against the defendants "upon

the special verdict of the jury, and facts credited or not disputed upon the trial." *Held*, As the facts set out in the special verdict were insufficient to sustain the judgment, and as, without a waiver of trial by jury—against which every reasonable presumption should be indulged—it was the constitutional right of the defendants to have the jury pass upon all the material facts in issue; the judgment must be reversed and a new trial had: *Hodges* v. *Easton*, S. C. U. S., Oct. Term 1882.

UNITED STATES.

When Debtor entitled to Exemption as against—Sect. 716 *and* 916 *Rev. Stat* —In case of executions upon judgments in civil actions, the United States are subject to the same exemptions as apply to private persons: *Fink* v. *O'Neil*, S. C. U. S., Oct. Term 1882.

UNITED STATES COURTS. See *Common Carrier.*

Jurisdiction—Who "Assignee" within the Act of March 3d 1875.—The owner of coupons payable to the holder thereof, is not an assignee within the meaning of the Act of March 3d 1875, and therefore his right of suit in the federal court does not depend upon the citizenship of any previous holder: *Town of Thompson* v. *Perrine*, S. C. U. S., Oct. Term 1882.

Suit collusively brought to confer Jurisdiction—Act of March 3d 1875.—A Michigan corporation needing to sue the city of Detroit, local prejudice was feared, and the directors refused to institute proceedings, and thereupon a stockholder and director residing in New York, brought suit in the U. S. Circuit Court. *Held*, That the circumstances showed that the refusal of the directors was given in order that this suit might be instituted, and that the same must be dismissed as being within the purview if not the letter of section 5 of the Act of March 3d 1875: *City of Detroit* v. *Dean*, S. C. U. S., Oct. Term 1882.

VENDOR AND VENDEE.

General Warranty—Mortgage of Record.—One who purchases land, receiving a deed of general warranty, without knowledge of a mortgage theretofore made by his grantor, but which mortgage was duly recorded, acquires no greater estate than an equity of redemption, notwithstanding the fact that the mortgagee from time to time, for a valuable consideration, after the purchase, extended the time of payment of the debt secured until the mortgagor becomes insolvent: *Kuhns* v. *McGeah*, 38 or 39 Ohio St.

Rescission—Fraud—Gross inadequacy of Price.—Upon a bill for rescission of a sale of land, alleging that the vendor falsely represented it contained valuable iron-ore, which was, in fact, worthless, the defendant denied upon oath that such representation was made; but the Court, upon proof that complainant purchased the land for the purpose of mining the ore, that the ore was valueless, that the purchase price was $2500 and the land worth only $250, declared the inadequacy so gross as to amount to fraud and rescinded the sale: *Peacham* v. *Reagan*, 10 Lea.

WATERS AND WATERCOURSES.

Right to change Channel.—A person owning land abutting on a river

through which a creek flows and empties into the river, may, as against proprietors on the opposite side of the river, change the channel and mouth of the creek upon his own land and for his own protection or convenience, if, in so doing, he exercises reasonable care and caution not to injure the rights of others; but such change cannot be made if increased danger of overflow on the opposite side might reasonably be anticipated therefrom: *Cin., Ham. and Day. Railroad* v. *Carr*, 38 or 39 Ohio St.

WHARFAGE.

Vessels moored abreast.—Where, under the port regulations of Savannah, two vessels were allowed to lie abreast at a wharf, and, for the sake of convenience in transhipment, the cargo was not actually landed upon the wharf and then re-shipped to the second vessel, but was carried directly from one to the other, it being the unvarying interpretation that such transhipments included both landing and shipping, the wharf owner would have the right to charge the rates allowed for landing and shipping, in the absence of any contract to the contrary: *Robertson* v. *Wilder*, 65 or 66 Ga.

LIST OF THE PRINCIPAL NEW LAW BOOKS.

BOUVIER.—A Law Dictionary, adapted to the Constitution and Laws of the United States of America, and of the several States of the American Union: with references to the civil and other systems of foreign law. By JOHN BOUVIER. 15th ed., thoroughly revised and greatly enlarged. By FRANCIS RAWLE. 2 vols. 8vo., pp. 1698. Philadelphia: J. B. Lippincott & Co.

COPP.—The American Settler's Guide: a popular exposition of the Public Land System of the United States of America. By H. N. COPP. 3d ed. 8vo., pp. 114. Washington: H. N. Copp.

GIAUQUE & MCCLURE.—Tables for ascertaining the present value of vested and contingent rights of Dower and Curtesy and of other life estates, based upon the Carlisle Tables of Mortality; computed and compiled by F. GIAUQUE and H. B. MCCLURE. 8vo., pp. 178. Cincinnati: R. Clarke & Co.

GREENOUGH.—A Digest of the Reported Decisions of the Courts of the United States of America, and of Great Britain and her Colonies, relating to the Rights and Liabilities of Gas Companies. Together with Extracts from the Statutes of the various United States concerning Gas Companies. By C. P. GREENOUGH. 8vo., pp. 307. Boston: Little, Brown & Company.

INDERMAUR.—Epitome of Leading Common Law Cases: with some short notes thereon: chiefly intended as a guide to "Smith's Leading Cases." 5th ed. By JOHN INDERMAUR. American edition by C. A. BUCKNAM and B. HALL. 8vo., pp. 107. Boston: Soule & Bugbee.

MACKELDEY.—Handbook of the Roman Law. By DR. E. MACKELDEY. Translated and edited by M. A. DROPSIE. 8vo., pp. 616. Philadelphia: T. & J. W. Johnson & Co.

SHARSWOOD and BUDD.—Leading Cases in the Law of Real Property decided in the American Courts. With notes by GEORGE SHARSWOOD and HENRY BUDD. Vol. I. 8vo., pp. 660. Philadelphia: M. Murphy.

WISE.—Outlines of Jurisprudence for the use of students. By B. R. WISE. 8vo., pp. 179. Oxford: J. Thornton.

WOOD.—A Treatise on the Limitation of Actions at Law and in Equity with an Appendix, containing the English and American Statutes of Limitations. By H. G. WOOD. 8vo., pp. 913. Boston: Soule & Bugbee.